

Appl. No. : 09/447,227
Filed : November 22, 1999

REMARKS

Claims 33-35, 38, 39, 41, 42, 48, 49, and 54-83 are pending in this application. Claims 36, 37, 40, and 84-87 have been canceled in the present amendment. Claims 34, 35, 38, 39, 64, and 78 have been amended. Support for the amendments is found in the specification and claims as filed. Specifically, support for a protruding interface tip, as recited in Claims 34 and 38, is found in the specification as filed at line 16-30 on page 13.

Claim Objection

Claim 78 has been objected to because the phrase "previously presented" has been entered into the claim. Claims 78 and 64 have been amended to replace this phrase with the term "new." The amendments to Claims 78 and 64 were entered solely to clarify the subject matter of the claims and not specifically pursuant to any provision of the Patent Act, therefore these amendments, even if viewed as narrowing, have not been made for a reason related to patentability. In view of the foregoing amendment, Applicants respectfully request withdrawal of the objection.

Claim Rejection - 35 U.S.C. §103(a)

Claims 33-36, 48, 54, and 70-87 have been rejected under 35 U.S.C. §103(a) as obvious over Rhodes *et al.* (WO92/13271) in view of Picha (US 5,706,807). To articulate a *prima facie* case of obviousness under 35 U.S.C. §103(a), the PTO must, *inter alia*, cite prior art that teaches or suggests all the claimed limitations. *In re Royka*, 490 F.2d 981 (C.C.P.A. 1974). Neither Rhodes nor Picha, alone or in combination, teaches or suggests all of the limitations claimed in independent Claim 34, which recites a method of measuring glucose in a biological fluid which comprises, *inter alia*, the step of "providing an implantable device comprising a sensor capable of continuous glucose sensing, said sensor having a protruding interface tip." Claims 33, 35, 36, 48, 54, and 70-83 depend from Claim 34. Claims 84-87 have been canceled without prejudice, solely to facilitate prosecution of the remaining claims. Applicants reserve the ability to pursue the canceled claims, or similar claims, in one or more continuing patent applications.

Rhodes *et al.* discloses a sensor having an electrode assembly recessed within a housing (see, *e.g.*, Figure 2 of Rhodes *et al.*). Likewise, Picha discloses a sensor device wherein the

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sensor is contained inside a receptacle having orifices (see, *e.g.*, col. 5, lines 37-41, and Fig. 8). Neither Rhodes *et al.* nor Picha teaches or suggests a sensor having a protruding interface tip. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Claim Rejection - 35 U.S.C. §103(a)

Claims 38-42, 49, and 55-69 have been rejected under 35 U.S.C. §103(a) as obvious over Rhodes *et al.* (WO92/13271) in view of Allen *et al.* (US 5,422,063). To articulate a *prima facie* case of obviousness under 35 U.S.C. §103(a), the PTO must, *inter alia*, cite prior art that teaches or suggests all the claimed limitations. *In re Royka*, 490 F.2d 981 (C.C.P.A. 1974). Neither Rhodes nor Picha, alone or in combination, teaches or suggests all of the limitations claimed in independent Claim 38, which recites a method of monitoring glucose levels which comprises, *inter alia*, the step of “providing ... a device comprising a housing and a sensor capable of continuous glucose sensing, said sensor comprising a protruding interface tip ... wherein said device comprises a body and wherein said sensor interface tip protrudes beyond a plane of the body to assist in formation of vasculature” Claims 39, 41, 42, and 55-69 depend from Claim 38.

As discussed above, Rhodes *et al.* discloses a sensor having an electrode assembly recessed within a housing (see, *e.g.*, Figure 2 of Rhodes *et al.*). Allen *et al.* discloses a sensor comprising a substrate material upon which the electrodes, glucose oxidase, and a membrane are deposited. While the membrane of the sensor of Allen *et al.* is deposited atop the electrodes, and thus extends away from the substrate, Allen *et al.* does not teach or suggest a sensor having a protruding interface tip, much less a sensor interface tip that assists in the formation of vasculature. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Claim Rejection - 35 U.S.C. §103(a)

Claims 37 and 87 have been rejected under 35 U.S.C. §103(a) as obvious over Rhodes *et al.* in view of Picha, and further in view of Gilligan *et al.*, “Evaluation of a subcutaneous glucose sensor out to 3 months in a dog model,” Diabetes Care 1994, 17:8, pp. 882-887. Although Applicants do not necessarily agree with the propriety of the rejection, Claims 37 and 87 have been canceled without prejudice, solely to facilitate prosecution of the remaining claims.

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Applicants reserve the ability to pursue the canceled claims, or similar claims, in one or more continuing patent applications. The rejection is therefore moot.

Conclusion

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any remaining concerns that might prevent the prompt allowance of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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